UNITED STATES INTERNATIONAL TRADE COMMISSION

GREENHOUSE TOMATOES FROM CANADA
Investigation No. 731-TA-925 (Preliminary)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3224, May 2001)

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-925 (Preliminary)

GREENHOUSE TOMATOES FROM CANADA

DETERMINATION

On the basis of the record[1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Canada of greenhouse tomatoes, provided for in subheadings 0702.00.20, 0702.00.40, and 0702.00.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

COMMENCEMENT OF FINAL PHASE INVESTIGATION

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

BACKGROUND

On March 28, 2001, a petition was filed with the Commission and Commerce by Carolina Hydroponic Growers Inc., Leland, NC; Eurofresh, Willcox, AZ; HydroAge, Cocoa, FL; Sunblest Management, Fort Lupton, CO; Sunblest Farms, Peyton, CO; and Village Farms, LP, Eatontown, NJ, alleging that an industry in the United States is materially injured, or threatened with material injury, by reason of LTFV imports of greenhouse tomatoes from Canada. Accordingly, effective March 28, 2001, the Commission instituted antidumping duty investigation No. 731-TA-925 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of April 4, 2001 (66 FR 17926). The conference was held in Washington, DC, on April 18, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

VIEWS OF THE COMMISSION

Based on the record in this investigation, we determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of greenhouse tomatoes from Canada that are allegedly sold in the United States at less than fair value.

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard in a preliminary antidumping investigation requires the Commission to find, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.[1] In applying this standard, the Commission weighs the evidence before it and determines whether "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation."[2]

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product and Product Description

In determining whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the "domestic like product" and the "industry."[3] Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Act"), defines the relevant domestic industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[4] In turn, the Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation."[5]

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[6] No single factor is dispositive, and the Commission

---

[1] 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Ranchers-Cattlemen Action Legal Foundation v. United States, 74 F. Supp.2d 1353, 1368-69 (Ct. Int'l Trade 1999).

[2] American Lamb, 785 F.2d at 1001; see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

[3] 19 U.S.C. § 1677(4)(A).

[4] 19 U.S.C. § 1677(4)(A).

[5] 19 U.S.C. § 1677(10).

[6] See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int'l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991) ("every like product determination 'must be made on the particular record at issue' and the 'unique facts of each case' "). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of

may consider other factors it deems relevant based on the facts of a particular investigation.[7] The Commission looks for clear dividing lines among possible like products and disregards minor variations.[8] The Commission must base its domestic like product determination on the record in this investigation, and it is not bound by prior determinations pertaining even to the same imported products.[9] Although the Commission must accept the determination of the Department of Commerce ("Commerce") as to the scope of the imported merchandise allegedly subsidized or sold at less than fair value, the Commission determines what domestic product is like the imported articles Commerce has identified.[10]

Commerce's notice of initiation defines the imported merchandise within the scope of this investigation as follows:

> all fresh or chilled tomatoes grown in greenhouses in Canada, e.g., common round tomatoes, cherry tomatoes, plum or pear tomatoes, and cluster or "on-the-vine" tomatoes. Specifically excluded from the scope of this investigation are all field-grown tomatoes.
>
> The merchandise subject to this investigation may enter under 0702.00.2000, 0702.00.2010, 0702.00.2030, 0702.00.2035, 0702.00.2060, 0702.00.2065, 0702.00.2090, 0702.00.2095, 0702.00.4000, 0702.00.4030, 0702.00.4060, 0702.00.4090, 0702.00.6000, 0702.00.6010, 0702.00.6030, 0702.00.6035, 0702.00.6060, 0702.00.6065, 0702.00.6090, and 0702.00.6095 of the Harmonized Tariff Schedule of the United States (HTSUS). These subheadings may also cover products that are outside the scope of this investigation, i.e., field-grown tomatoes. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.[11]

---

distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

[7] See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

[8] Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249 at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in "such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not 'like' each other, nor should the definition of 'like product' be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.").

[9] Nippon, 19 CIT at 455; Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1169 n.5 (Ct. Int'l Trade 1988) (particularly addressing like product determination); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1087-88 (Ct. Int'l Trade 1988).

[10] Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

[11] 66 Fed. Reg. 20630, 20631 (Apr. 24, 2001).

B. Domestic Like Product Issue in This Investigation

Petitioners argue that the domestic like product should consist of tomatoes grown in greenhouses only. Respondents argue that the like product should consist of all tomatoes grown for the fresh market, whether grown in greenhouses or in the field.[12]

The Commission's past investigations involving tomatoes offer only limited guidance as we consider this issue. Two of the prior investigations were decided under a different statute, with different legislative histories and statutory purposes.[13] All of the investigations were based on factual records that were distinct from the record in the preliminary phase of this investigation.[14]

Based on our examination of the six traditional domestic like product factors, we find the domestic like product to include only tomatoes grown in greenhouses, for purposes of our preliminary determination.

Physical characteristics and uses

There are differences in physical characteristics between, as well as among, greenhouse tomatoes and field tomatoes. Tomato plants of the species *Lycopersicon esculentum* generally are grown in greenhouses, while those of the species *Lycopersicon pyriforme* generally are grown in the field, although both species may be found in greenhouses and in the field.[15] *Lycopersicon cerasforme* (including cherry tomatoes) are grown in both settings.[16] Within each of the three species, however, there are various types

---

[12] All parties agree that tomatoes grown for processing into other products should not be included in the domestic like product. We do not include tomatoes grown for processing in the domestic like product. Compare Fresh Winter Tomatoes from Mexico, Inv. No. 731-TA-747 (Preliminary), USITC Pub. 2967 at 11-13 (May 1996).

[13] Both Fresh Winter Tomatoes, Inv. No. TA-201-64 (Provisional Relief Phase), USITC Pub. 2881 (April 1995) and Fresh Tomatoes and Bell Peppers, Inv. No. TA-201-66, Pub. 2985 (Aug. 1996) were safeguard investigations, decided under section 202 of the Trade Act of 1974 (19 U.S.C. § 2252). See Ranchers-Cattlemen Action Legal Foundation v. United States, 74 F. Supp. 2d 1353, 1379 (Ct. Int'l Trade 1999) ("As the ITC explained that the previous publication was not for an antidumping investigation and the information and data gathered were not for the same time period as this investigation, the Court finds the ITC did not abuse its discretion in apparently not relying on its previous finding in this determination."); Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 (Preliminary) and 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 5-6, n.20 ("determinations in Commission investigations of live cattle conducted under section 201 of the Trade Act of 1974 in 1977 . . . offer limited guidance in decisions under the antidumping/countervailing duty laws").

[14] The third investigation was Fresh Tomatoes from Mexico, Inv. No. 731-TA-747 (Preliminary), USITC Pub. 2967 (May 1996). See USEC, Inc. v. United States, Slip op. 01-08 at 24-25 (CIT) ("ITC need not follow prior decisions if new arguments or facts support a different conclusion") and Ranchers-Cattlemen Action Legal Foundation v. United States, 74 F. Supp. 2d 1353, 1379 (Ct. Int'l Trade 1999).

[15] CR at I-3 & n.8, PR at I-2 & n.3; transcript of April 18, 2001 conference ("Conf. Tr.") at 115, 140-42 (testimony of Jay Colasanti, Principal, Red Zoo Marketing).

[16] Petitioners' Postconference Brief at 23 n.56 (cherry tomatoes grown in greenhouses in small volumes); Respondents' Postconference Brief at 12 n.15; Conf. Tr. at 14 (Mike DeGiglio, Chief Executive Officer, Village Farms, LLC).

of tomatoes, and within each type, many varieties.[17] Moreover, tomatoes may be similar in general appearance, even if they are of different species and varieties.[18]

Greenhouse tomatoes typically have thinner skin, higher water content, superior color and texture, and a more uniform appearance than field tomatoes.[19] A large portion of field tomatoes are picked while still entirely green, before the fruit has converted various starches into sugars.[20] These tomatoes redden by the addition of ethylene gas (the gas naturally produced by tomatoes during the ripening process).[21] These "gas green" tomatoes, while red, never ripen in terms of their starch and sugar content.[22] By contrast, most greenhouse tomatoes are picked later during the ripening process, when they begin to show some red color.[23] They are more advanced in terms of starch conversion than their gas green counterparts, and will turn red without the addition of ethylene gas.[24] Some field tomatoes are allowed to ripen beyond the gas green stage, however, and these tomatoes, while still green, are more similar to greenhouse beefsteak tomatoes than are gas green tomatoes in terms of ripeness.[25]

"Tomatoes-on-the-vine" or "cluster" tomatoes comprise a growing portion of greenhouse tomatoes. Cluster tomatoes arrive at the store with several tomatoes still attached to the vine or truss, all in the same stage of ripeness.[26] They currently account for about 42 percent of greenhouse tomato production.[27] Because they are harvested at an advanced stage of ripeness, and because they absorb nutrients on the vine until harvested, cluster tomatoes reportedly have superior appearance and taste compared to other tomatoes, including field "vine-ripened" tomatoes, which are harvested when they begin to show some red color.[28] Field tomatoes are not typically harvested or marketed in clusters.[29]

---

[17] Conf. Tr. at 163 (Larry Gianatti, Managing Partner, Quality Sales, LLC; Colasanti).

[18] For example, tomatoes commonly known as "beefsteak" apparently can be of either the *Lycopersicon esculentum* or the *Lycopersicon pyriforme* species, and are grown both in greenhouses and in fields Id. at 14 (DeGiglio), 23 (Robert R. Weidaw, Chief Financial Officer, Eurofresh, Inc.), 26-27 (Fried de Schouwer, Director of Sales and Marketing, Eurofresh, Inc.), 46-48 (Terence Stewart, counsel for petitioners), 99 (Mark McConnell, counsel for respondents), 161-62 (Gianatti); Petitioners' Postconference Brief at 23-24; Petition at Exh. 27 at ¶ 8 (affidavit of ***).

[19] CR at I-2 to I-3 & n.10, PR at I-2 & n.10, Conf. Tr. at 27 (de Schouwer).

[20] Petition at Exh. 29 ("U.S. Fresh Fruit and Vegetable Marketing: Emerging Trade Practices, Trends, and Issues") at 12; CR and PR at I-3 n.11, II-1; Petitioners' Postconference Brief at 23; Conf. Tr. at 103-04 (Andy Smith, President, BC Hothouse Foods, Inc.).

[21] CR and PR at I-3 n.11; Conf. Tr. at 104 (Smith); Petition at 60.

[22] Conf. Tr. at 104 (Smith).

[23] Id. at 93 (Dave Fahrenbruch, General Manager of Operations, Sun Blest Management LLC).

[24] Id.

[25] Even these "vine-ripe" tomatoes tend to have a thicker skin and lower water content than greenhouse tomatoes. CR at I-2 to I-3 & n.10, PR at I-2 & n.10; Conf. Tr. at 27 (de Schouwer); Petitioners' Postconference Brief at 23.

[26] Conf. Tr. at 27, 90 (de Schouwer).

[27] Id. at 27 (de Schouwer). See CR at II-2, PR at II-1.

[28] Id. at 47 (Stewart), 92 (de Schouwer), 93 (Fahrenbruch), 142 (Smith).

[29] Conf. Tr. at 91-92 (Stewart), 142 (Christopher Stokes, counsel for respondents), 148-49 (Colasanti).

Nearly all greenhouse tomatoes are used in home food preparation.[30] Field tomatoes are used primarily (60 percent) in home food preparation and secondarily (40 percent) in institutional food service preparation.[31] According to petitioners, greenhouse tomatoes generally are too soft and thin-skinned for use in the mechanical slicers used by the food service industry, and are more difficult to slice in general, even by hand.[32] Some greenhouse tomatoes, however, are used in higher-end restaurants and country clubs.[33]

Interchangeability

The current record is mixed on the issue of interchangeability between greenhouse and field tomatoes. As noted above, food service providers reportedly favor firmer, less juicy field tomatoes because greenhouse tomatoes are more difficult to slice.[34] The potential interchangeability, however, is greater between greenhouse tomatoes and field tomatoes sold to the retail sector for home use, and in particular between so-called "vine-ripe" field tomatoes and greenhouse tomatoes.[35] In general, field tomatoes cannot be substituted for greenhouse tomatoes to fill orders for certain stock keeping unit numbers ("SKUs") and price look up codes ("PLUs") used by retailers.[36] On the other hand, greenhouse and field tomatoes compete with each other for grocery store shelf space, and several distributors indicated that they substitute field tomatoes for greenhouse tomatoes when the quality of the former is high enough, particularly when locally-grown field tomatoes are in season.[37]

Common production facilities, processes, and employees

By definition, greenhouse tomatoes are grown in greenhouses, which generally consist of steel framed structures with a peaked roof covered with glass.[38] Use of a greenhouse allows the grower to control the light, temperature, and carbon dioxide levels.[39] All or almost all greenhouse tomatoes are hydroponic, meaning they are grown in a non-soil substrate that allows for precise control of nutrients

---

[30] CR at II-3, PR at II-2; Conf. Tr. at 27-28 (de Schouwer),

[31] CR at II-3, PR at II-2; Conf. Tr. at 129 (John Reilly, Nathan Associates).

[32] CR at II-3, PR at II-2; Conf. Tr. at 27-28 (de Schouwer), 65-66 (Fahrenbruch).

[33] Conf. Tr. at 159 (Joe Comito, President, Capital City Fruit).

[34] CR at I-4 to I-5, II-3; PR at I-3, II-2; Conf. Tr. at 27-28 (de Schouwer). Interchangeability may be limited even for the small portion of greenhouse tomatoes sold to institutional food providers (mostly expensive restaurants and country clubs), since these customers tend to require premium quality. See CR at I-5 and PR at I-3 (statement of ***), CR at II-10 and PR at II-7.

[35] CR at II-8 to II-10, PR at II-5 to II-6.

[36] Conf. Tr. at 29-30 (de Schouwer). See CR at II-8, PR at II-5. We observe, however, that several tomato varieties have distinctive SKUs and PLUs. See Conf. Tr. at 126 (Reilly), 185-86 (Stewart).

[37] Conf. Tr. at 122, 155 (Comito), 161-62 (Gianatti, Comito); CR at I-5, V-14; PR at I-4, V-11.

[38] CR at C-8, PR at C-7.

[39] CR at C-6 to C-7, PR at C-6; Petition at Exh. 27 at ¶ 8 (affidavit of ***).

and water.[40] Greenhouses are costly to establish and operate, but yield higher harvests per acre than do fields.[41]

Field tomato plants are planted outdoors in soil, and are susceptible to extreme weather, unfavorable soil conditions, and pests.[42] Some of these problems also exist in greenhouses, but to a lesser degree.[43]

No domestic producer reported growing tomatoes both in greenhouses and in fields.[44] Accordingly, there is no overlap in production employees.

Producer and customer perceptions

Domestic producers generally regard greenhouse tomatoes as superior to field tomatoes in terms of quality and low pesticide use.[45] On the other hand, the record also indicates that some end users (and therefore also retailers) may prefer high quality field tomatoes, such as organic tomatoes and locally-grown tomatoes when in season.[46] Food service customers prefer gas green tomatoes, but apparently based on slicing characteristics rather than quality or on possible pesticide residues. As noted above, retailers also distinguish between various forms of tomatoes, including greenhouse and field tomatoes, by maintaining separate SKUs and PLUs. Reportedly, retailers will not accept field tomatoes for sale under the SKUs or PLUs designated for greenhouse tomatoes.[47] The record also shows, however, that greenhouse and field tomatoes compete against each other for shelf space in grocery stores.[48]

---

[40] Conf. Tr. at 43, 88-89 (DeGiglio); CR and PR at C-6; Petition at Exh. 18 at ¶ 15 (affidavit of ***).

[41] CR at I-4; PR at I-3; Conf. Tr. at 20 (Fahrenbruch), 21-22 (Weidaw); Petitioners' Postconference Brief at 30; Petition at Exh. 27 at ¶ 8.

[42] Respondents argue that some field tomatoes are grown in covered fields that represent a midpoint in a continuum of growing environments from open fields to greenhouses. While such techniques are employed outside the United States, the record before us does not indicate that they are practiced in the United States to a significant degree. We do not reach the issue of whether covered fields blur the production process distinction between field and greenhouse production.

[43] Conf. Tr. at 31 (de Schouwer); CR and PR at C-6.

[44] CR at I-4, PR at I-3; Conf. Tr. at 11-12 (DeGiglio).

[45] CR at I-5 to I-6, PR at I-4; Conf. Tr. at 9-11 (DeGiglio), 28-30 (de Schouwer), 118 (Gianatti).

[46] Conf. Tr. at 101 (McConnell), 123 (Comito), 161-62 (Gianatti, Comito).

[47] CR at I-5, PR at I-4; Conf. Tr. at 29-30 (de Schouwer), 35 (Stewart).

[48] Conf. Tr. at 105-08 (Smith), 115 (Colasanti), 122-24 (Comito), 161-62 (Gianatti), 162 (Comito).

Channels of distribution

In general, greenhouse tomatoes are packed on site.[49] Nearly all are sold to grocery retailers, whether directly from growers to larger retailers, or via a distributor to smaller retailers.[50] Only a small portion of greenhouse tomatoes is sold to food service providers.[51]

The largest portion of field tomatoes, about sixty percent, is ultimately sold to grocery retailers, while the remainder is sold to food service providers.[52] Field growers typically do not pack their own tomatoes, but rely on packers and, in many cases, re-packers.[53] Field tomatoes destined for food service providers travel there directly from the packers, whereas field tomatoes destined for retail are sent to re-packers, who re-sort the tomatoes by color.[54]

Price

Both domestic producers and importers of the subject merchandise agree that greenhouse tomatoes generally sell at a premium over field tomatoes.[55] High-quality field tomatoes, such as locally-grown field tomatoes in season, may sell for higher prices than greenhouse tomatoes.[56] Higher prices for field tomatoes appear the exception rather than the rule, however, because average unit values ("AUVs")[57] of U.S. shipments of domestic greenhouse tomatoes were more than double the AUVs of field tomatoes in each of the years 1998, 1999, and 2000.[58]

Conclusion

The evidence on the record is mixed, and contains little relevant information from field producers, food service customers, or large retail customers regarding a number of important questions. The record does reflect at least some differences between greenhouse and field tomatoes in physical characteristics,

---

[49] CR and PR at II-2.

[50] CR at II-3, PR at II-2; Conf. Tr. at 28 (de Schouwer). Direct sales to large retailers account for about 45 percent of greenhouse tomato sales, with sales to wholesalers/distributors making up about 55 percent. CR at II-3, PR at II-2.

[51] CR at II-3, PR at II-2; Conf. Tr. at 159 (Comito).

[52] CR at II-3; PR at II-2; Conf. Tr. at 28 (de Schouwer), 129 (Reilly).

[53] Conf. Tr. at 28 (de Schouwer), 95 (Stewart); Petition at Exh. 29 at 12.

[54] Conf. Tr. at 94-95 (Stewart), CR at I-6 and PR at I-4.

[55] CR at I-7, II-1 to II-2, PR at I-4 to I-5, II-1; Conf. Tr. at 30 (de Schouwer), 37 (Weidaw).

[56] See Conf. Tr. at 161-62 (Gianatti, Comito).

[57] The Commission views AUVs with caution when comparing prices of the domestic like product and subject imports. Because the product mix in the two groups may differ, AUVs may not reflect an accurate price comparison for a particular product. That problem is of less concern here, however, because we are examining the degree to which different AUVs reflect differences between types of domestic merchandise. Regardless of whether greenhouse tomatoes command higher prices because they are more heavily weighted toward types of tomatoes that are higher in value, or whether the product mix is the same but they are higher in quality (or some combination of both), AUVs reflect differences in average price.

[58] Compare table III-2, CR and PR at III-3 with table C-2, CR and PR at C-4.

uses, channels of distribution, production processes, producer and customer perceptions, and prices. We therefore find the domestic like product to consist of greenhouse tomatoes for purposes of this preliminary determination, but intend to re-examine the question in any final phase of this investigation.[59]

C. Domestic Industry and Related Parties

In defining the domestic industry, the Commission's general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.[60] Based on our definition of the domestic like product, we define the corresponding domestic industry as all growers of greenhouse tomatoes in the United States.

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B) of the Act. That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.[61] Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.[62]

***, a domestic producer of greenhouse tomatoes, imported subject merchandise from Canada during the investigation period, and therefore is a related party under the statute.[63] During the year 2000, *** accounted for *** percent of reported domestic greenhouse tomato production, and imported from Canada a volume of greenhouse tomatoes equivalent to less than *** percent of its production.[64] It reported that it imported subject greenhouse tomatoes to ***.[65] ***. Because *** accounts for a significant share of the domestic production of greenhouse tomatoes, and its imports of subject merchandise are *** compared

---

[59] Vice Chairman Okun and Commissioner Devaney consider the domestic like product issue to be a close one. In any final phase of this investigation, they intend to examine closely the nature and extent of variations between fresh tomatoes grown in greenhouses and fresh tomatoes grown in fields.

[60] See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int'l Trade 1994), aff'd, 96 F.3d 1352 (Fed. Cir.1996).

[61] 19 U.S.C. § 1677(4)(B).

[62] Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd mem., 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the less than fair value sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry. See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd mem., 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 at 14 n.81 (Feb. 1997).

[63] CR at III-2 n.1, PR at III-1 n.1.

[64] Table III-1, CR and PR at III-2; CR at III-2 n.1, PR at III-1 n.1.

[65] CR at III-2 to III-3 n.1, PR at III-1 n.1.

to its domestic production, it appears that the company's interests lie primarily in domestic production and not importation. Accordingly, we find that appropriate circumstances do not exist to exclude *** from the domestic industry.

A second domestic producer, ***, also imported subject merchandise from Canada during the investigation period, and therefore is a related party under the statute.[66] During 2000, *** accounted for *** percent of reported domestic greenhouse production, and imported from Canada a volume of greenhouse tomatoes equivalent to less than *** percent of its production.[67] It stated that it imported subject greenhouse tomatoes to ***.[68] ***. Because *** accounts for a significant share of the domestic production of greenhouse tomatoes, and its imports of subject merchandise are *** compared to the size of its domestic production, it appears that the company's interests lie primarily in domestic production and not importation. Accordingly, we find that appropriate circumstances do not exist to exclude *** from the domestic industry.

A third domestic producer, Houweling Oxnard ("Houweling"), is wholly owned by Houweling Nurseries, a producer of subject greenhouse tomatoes in Canada, and therefore is a related party under the statute as well.[69] ***.[70] Houweling accounted for *** percent of domestic greenhouse tomato production in 2000.[71] The company did not ***. It indicated, however, that ***, and ***.[72] On these bases, we find that appropriate circumstances do not exist to exclude Houweling from the domestic industry.

III. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LESS THAN FAIR VALUE IMPORTS[73]

In the preliminary phase of an antidumping duty investigation, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.[74] In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[75] The statute defines

---

[66] CR at III-2 n.1, PR at III-1 n.1.

[67] Table III-1, CR and PR at III-2; CR at III-2 n.1, PR at III-1 n.1.

[68] CR at III-2 to III-3 n.1, PR at III-1 n.1.

[69] CR and PR at III-1. ***. Id.

[70] CR at III-2 & n.1, PR at III-1 & n.1.

[71] Table III-1, CR and PR at III-2.

[72] CR at E-3 to E-4, and PR at E-3. Accord, Petitioners' Postconference Brief at 46. ***. These results were ***. Table VI-3, CR at VI-11, PR at VI-3. Houweling's operating results were significantly ***.

[73] We find that imports of greenhouse tomatoes from Canada are not negligible under 19 U.S.C. § 1677(24) as they constitute 67.2 percent of total imports of greenhouse tomatoes in the most recent twelve-month period for which data are available. Table IV-1, CR and PR at IV-2.

[74] 19 U.S.C. §1673b(a).

[75] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor … [a]nd explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B); see also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

"material injury" as "harm which is not inconsequential, immaterial, or unimportant."[76] In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[77] No single factor is dispositive, and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[78]

For the reasons discussed below, we determine that there is reasonable indication that the domestic greenhouse tomato industry is materially injured by reason of subject imports from Canada.

A. Conditions of Competition

The following conditions of competition are pertinent to our analysis.

Demand for greenhouse tomatoes has expanded from a small base during the 1990s and has risen steadily during the period examined in this investigation.[79] Apparent U.S. consumption rose from 401 million pounds in 1998, to 459 million pounds in 1999, and to 512 million pounds in 2000.[80] Demand for fresh field tomatoes during the same period remained stable, but at much higher levels.[81]

The domestic supply of greenhouse tomatoes has also increased: U.S. producers' capacity rose from 161 million pounds in 1998, to 186 million pounds in 1999, and to 204 million pounds in 2000.[82] U.S. production rose from 145 million pounds in 1998, to 173 million pounds in 1999, and to 183 million pounds in 2000.[83]

We have considered the seasonality of the domestic industry, which affects production and quality. Greenhouse tomato production is sensitive to the amount of light available and is impeded by temperatures that are too high or too low.[84] Northern U.S. producers seed in late fall to begin harvesting by late winter

---

[76] 19 U.S.C. § 1677(7)(A).

[77] 19 U.S.C. § 1677(7)(C)(iii).

[78] 19 U.S.C. § 1677(7)(C)(iii).

[79] CR at II-5, PR at II-4. Responses to Commission questionnaires from producers and importers noted substantial increases in demand for greenhouse tomatoes since 1998, with producers characterizing the demand variously as "rising steadily," "increased significantly," and "40% increase," purportedly due to an increased demand for high-quality, year-round tomatoes that "taste good" and have a long shelf life. CR at II-6, PR at II-4. Responding importers identified factors including "food safety" and increased availability as helping to fuel demand. CR at II-6, PR at II-4.

[80] CR at II-7, PR at II-5 and Table IV-1 (CR and PR at IV-2).

[81] The volume of domestic consumption of field tomatoes was 4.4 billion pounds in 1998, 4.5 billion pounds in 1999, and 4.4 billion pounds in 2000. (Figures derived from tables C-1 and C-3, CR and PR at C-3 and C-5.) USDA estimated per capita consumption of fresh field tomatoes of 17.9 pounds in 1998, 17.8 pounds in 1999, and 17.8 pounds (forecasted) for 2000. CR at II-6, PR at II-4. In any final phase investigation we will further examine the relationship between demand for greenhouse tomatoes and demand for field tomatoes. We will also examine the extent to which apparent consumption for both products may be affected by supply factors, e.g., seasonality.

[82] Table III-2, CR and PR at III-3.

[83] Table III-2, CR and PR at III-3.

[84] CR at II-4, PR at II-3.

to early spring.[85] Production then continues through November.[86] Producers in southern climates seed in July to begin harvesting in September.[87] Domestic winter production volumes are lower than summer production volumes.[88] [89]

We also have considered the competition between greenhouse and field tomatoes, a point upon which the parties' arguments diverge sharply. On balance, the record in the preliminary phase of this investigation indicates at least some competition between greenhouse and field tomatoes.[90] We intend to re-examine the nature and extent of the competitive relationship between greenhouse and field tomatoes in any final phase of the investigation.

We have considered the parties' characterization of tomato producers as "price takers," although we note that the domestic industry producing greenhouse tomatoes is highly concentrated.[91] Factors that may constrain the ability of individual market participants to affect market-wide prices include the perishability of the product and the inability of producers to keep inventory on hand.[92] Most of a producer's "inventory" is on the vine, to be picked just prior to the time of shipment.[93] Greenhouse tomatoes are sold largely on a spot-market basis or through short-term contracts (e.g., one-week commitments).[94] Moreover, although weather and pests pose fewer problems for greenhouse tomato producers than field tomato producers, the former remain at least somewhat susceptible to these problems.[95]

---

[85] Id.

[86] Id.

[87] Id.

[88] Id.

[89] Data for shipment volumes of U.S. field tomatoes reflect seasonal influences as well. The data, compiled by the USDA, appear at CR at table D-1 (CR and PR at D-4 to D-6). For example, shipment volumes for California are zero (or near zero) during the first four months of the year, increasing thereafter to peak levels during summer months and then declining significantly in November and December. Florida, by contrast, shows little if any production during July, August, and September, generating its most significant production beginning in late fall, with apparent peaks in December and then again in April and May. Florida and California represent the largest shares of U.S. field tomato production, with other states supplementing production, with a much smaller combined share, mostly during summer months.

[90] CR at V-14 to V-15, PR at V-11 (questionnaire responses indicating that field tomato prices have effect on greenhouse tomato prices); United States Securities and Exchange Commission Form S-1 of Colorado Greenhouse Holdings, Inc. (June 19, 1998) (greenhouse producer identifying direct competition between greenhouse and field tomatoes). Additional factors that we considered at this preliminary phase include evidence that the style or variety of field tomato might affect levels of competition with greenhouse tomatoes (e.g., field grape tomatoes and so-called organic tomatoes) and that, depending upon the season and location of production, other field tomatoes might enjoy sales to the virtual exclusion of greenhouse tomatoes. Conf. Tr. at 118-19 (Gianatti), 161-62 (Gianatti, Comito). Other evidence cited in this opinion also reflects at least some competition between greenhouse and field tomatoes.

[91] Petition at 66; Respondents' Postconference Brief at 35.

[92] CR at II-5, PR at II-3.

[93] Id.

[94] CR at V-3, PR at V-1 to V-2.

[95] Conf. Tr. at 19, 52 (Fahrenbruch).

Finally, nonsubject greenhouse tomato imports are present in sizeable, though declining, quantities.[96] The vast majority of nonsubject greenhouse tomato imports are from Mexico, Holland, Belgium, Spain, and Israel.[97] The quantity of nonsubject greenhouse tomato imports declined from 127 million pounds in 1998, to 120 million pounds in 1999, and to 109 million pounds in 2000.[98] During this same period, as a share of U.S. consumption quantity, nonsubject imports decreased from 31.5 percent in 1998, to 26.2 percent in 1999, and to 21.3 percent in 2000.[99] [100]

B. Volume of Subject Imports

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[101]

The volume of greenhouse tomato imports from Canada was 136 million pounds in 1998, 175 million pounds in 1999, and 224 million pounds in 2000. Subject import volume increased by 28.9 percent between 1998 and 1999 and by 27.4 percent between 1999 and 2000, a 64.3-percent increase for the period 1998-2000.[102] Because the volume of greenhouse tomatoes from Canada increased more rapidly than apparent U.S. consumption, subject imports accounted for an increasingly large share of the U.S. market between 1998 and 2000, rising from 33.9 percent in 1998 to 43.7 percent in 2000.[103] The domestic industry's U.S. shipments increased in absolute terms, although the domestic industry's market share changed very little because of rising domestic consumption.[104] Accordingly, the increase in market share of subject imports was accompanied by a fall in the market share of nonsubject imports, but not in the market share of domestically-produced greenhouse tomatoes.

For the purposes of our preliminary investigation, we find that this volume and increase in volume of subject imports are significant in absolute terms, and relative to production or consumption in the United States.

---

[96] A comparison of the domestic products to nonsubject imports and subject imports to nonsubject imports appears at CR at II-12 to II-15, PR at II-7 to II-9.

[97] CR at II-12, PR at II-8.

[98] Table IV-1, CR and PR at IV-2.

[99] Id.

[100] There are also sizeable imports of field tomatoes from Mexico. CR at II-12, D-3 to D-9, PR at II-8, D-3 to D-9 (including tables D-1 and D-2), Conf. Tr. at 145-46 (Reilly).

[101] 19 U.S.C. § 1677(7)(C)(i).

[102] Table IV-1, CR and PR at IV-2.

[103] Table IV-1, CR and PR at IV-2.

[104] The volume of U.S. shipments by the domestic industry was 139 million pounds in 1998, 163 million pounds in 1999, and 179 million pounds in 2000. Table III-2, CR and PR at III-3. The domestic industry's share of the greenhouse tomato market was 34.6 percent in 1998, 35.5 percent in 1999, and 35.0 percent in 2000. Table IV-1, CR and PR at IV-2.

C. Price Effects of the Subject Imports

Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

> (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
>
> (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[105]

Market participants view U.S.-grown and Canadian-grown greenhouse tomatoes as interchangeable and generally comparable in quality.[106] As noted above, greenhouse tomato producers are characterized as price takers because they produce a perishable product, cannot keep their goods in inventory for extended periods, and cannot easily increase or decrease production rapidly.

The Commission collected price data for three greenhouse tomato products, including sales both to retailers and distributors.[107] Price comparisons between domestic and subject greenhouse tomatoes show a mixed pattern of overselling and underselling, but subject imported greenhouse tomatoes increasingly undersold the domestic product late in the period examined. Underselling existed in slightly more than half of the comparisons in 1998 (37 out of 69) and in 1999 (36 out of 70), but predominated in comparisons in 2000 (58 out of 72).[108] We have considered price comparisons for both sales to retailers and sales to distributors. Because about 85 percent of subject imports were sold to retailers and 15 percent were sold to distributors,[109] however, we place somewhat more weight on comparisons of sales to retailers.[110] The mixed pattern of underselling in sales to retailers is similar to the overall trend, although the increase in underselling in 2000 is less pronounced.[111] On these bases, we find that there was significant price underselling of the domestic like product by the subject imports.

In considering whether subject imports have had significant price-depressing or price-suppressing effects, we have examined the extent to which subject imports contributed to observed annual and inter-

---

[105] 19 U.S.C. § 1677(7)(C)(ii).

[106] CR at II-11, PR at II-7. As discussed earlier, field tomatoes may have a greater range of applications and more variable quality.

[107] The Commission defined "Product 1" as "Beefsteak (round) jumbo tomatoes, with an approximate count of 18, 20, or 22 per 15-pound box," Product 2 as "Beefsteak (round), extra large with an approximate count of 25, 28, 30, or 32 per 15-pound box," and Product 3 as "On-the-vine (cluster), either bagged, loose, or stickered in an 11-pound box." CR at V-5, PR at V-3.

[108] Table V-7, CR at V-13 and PR at V-10.

[109] By contrast, about 55 percent of domestically-produced greenhouse tomatoes are sold to distributors, while about 45 percent are sold the retailers. CR at II-3, PR at II-2.

[110] CR at II-3, PR at II-2. In the event of a final phase investigation, we will examine further how prices are set in the market, including the relationship, if any, between prices set at the distributor level and the retail level.

[111] In sales to retailers, the subject imports undersold the domestic product in 19 out of 35 comparisons in 1998, 20 out of 36 comparisons in 1999, and 22 out of 36 comparisons in 2000. Table V-7, CR at V-13 and PR at V-10.

year price trends. Prices for domestic greenhouse tomatoes exhibited seasonal fluctuations during the years examined. In general, prices were highest in January and then declined through May, with the sharpest drops usually in April.[112] They then fluctuated at lower levels through September, when they climbed until January of the following year.[113] Nevertheless, there were marked differences observed both among the three pricing products, and from year-to-year for each product. In particular, the recovery in prices occurred later in 1999 than in 1998 and 2000.[114] To a lesser extent, prices were also lower during other months in 1999 than in 1998 or 2000.[115] Average unit values ("AUVs") of U.S. shipments of greenhouse tomatoes by domestic producers reflect the same pattern observed in the pricing data. AUVs for these shipments fell from 83 cents per pound in 1998 to 73 cents per pound in 1999, and rose to 78 cents per pound in 2000.[116]

Fluctuations in subject import volumes generally correspond with observed seasonal price trends, with prices lowest during times of highest volume. Prices generally fell to their lowest during May through September. Subject Canadian volumes are very low during the winter, increase sharply in April and May, and fall off steeply beginning in September and October.[117]

The record indicates other possible influences on seasonal price fluctuations, however. Despite general differences between greenhouse tomatoes and field tomatoes in quality and price, the supply and price of field tomatoes appear to influence prices for greenhouse tomatoes. The volume of field tomatoes from Florida increases sharply in April and May, corresponding with the drop in the prices of greenhouse tomatoes.[118] During the summer, production increases in California and other states, with production moving north as the year progresses deeper into the summer.[119] The Commission received testimony that seasonal price fluctuations pre-date significant production of greenhouse tomatoes, and thus were a function of field tomato supply and demand, independent of the effect of greenhouse tomatoes.[120] The Commission also received testimony that the quality of some nonsubject imports declines in April and that those imports have negative effects on prices as well.[121]

---

[112] Figures V-2 to V-4, CR at V-12 to V-13, PR at V-10.

[113] Id.

[114] Tables V-1 to V-6, CR at V-6 to V-11 and PR at V-4 to V-9 (showing that domestic prices were lower in 1999 than in 1998 or 2000 in four of the six channel/product combinations in September, five of the six channel/product combinations in October, all six channel/product combinations in November, and four of the six channel/product combinations in December).

[115] Tables V-1 to V-6, CR at V-6 to V-11 and PR at V-4 to V-9 (showing that domestic prices were lowest in 1999 in three or four of the six channel/product combinations from January through August).

[116] Table III-2, CR and PR at III-3. The increase in AUVs in 2000 may reflect in part a change in product mix. The record reflects that cluster tomatoes account for an increasing portion of domestic greenhouse tomato production. Conf. Tr. at 27 (de Schouwer).

[117] Table D-1, CR and PR at D-4 to D-6.

[118] Id.

[119] Id.; Conf. Tr. at 152-53 (Comito). Indeed, the volume of shipments indicated in the record (table D-1) does not purport to include what may be significant volumes of tomatoes sold during the late summer from roadside produce stands or harvested from backyard gardens.

[120] Conf. Tr. at 152-53 (Comito).

[121] Id. at 153-54 (Gianatti).

The record is mixed regarding the causes of inter-year price changes. As noted above, domestic shipments of subject imports from Canada grew throughout the period examined.[122] The increase in subject volumes from 1998 to 1999 corresponds with the decline in prices over the same years (discussed above) for the domestic like product. However, from 1999 to 2000, the volume of subject imports and frequency of underselling increased, yet prices for the domestic like product increased.[123] On the other hand, prices for domestic greenhouse tomatoes generally were lower in 2000 than in 1998 in those products and channels of distribution in which the volume of subject imports from Canada was higher.[124] Conversely, prices for domestic greenhouse tomatoes generally were higher in 2000 than in 1998 for particular products sold in channels of distribution in which the volume of subject imports from Canada was lower.[125] [126]

We also note, however, that per unit costs of domestic producers increased in 2000, and, although prices increased somewhat over 1999, producers were unable to recoup their losses through higher prices, despite growing demand for greenhouse tomatoes.[127]

We find, for purposes of our preliminary determination, that the record contains sufficient information to conclude that the subject imports had significant price depressing and price suppressing effects on prices of the domestic like product. In the event of a final phase investigation, we will explore further the effects of the subject imports as well as field tomatoes and nonsubject imports on prices of greenhouse tomatoes.

---

[122] Table IV-1, CR and PR at IV-2.

[123] Higher subject volumes do not correspond with the low prices in late 1999, when prices recovered more slowly than in 1998 or 2000. Subject volumes from Canada were lower in September, October, and November of 1999 than during the corresponding months of either 1998 or 2000. The Canadian subject imports did not undersell the domestic like product disproportionately during the months of September through November of 1999, compared to the same periods of 1998 or 2000. Table D-1, CR and PR at D-5 to D-6.

[124] Tables V-1 to V-6, CR at V-6 to V-11 and PR at V-4 to V-9 (in particular product 2 sold to retailers, product 2 sold to distributors, and product 3 sold to retailers).

[125] Tables V-1 to V-6, CR at V-6 to V-11 and PR at V-4 to V-9 (in particular product 1 sold retailers, product 1 sold to distributors, and product 3 sold to distributors).

[126] Changes in the supply of field tomatoes appear to account for at least some of the year-to-year fluctuations in prices for domestic greenhouse tomatoes. The record reflects a larger than average field tomato harvest in 1999, both in Florida and California, the two primary field tomato-producing states. Table D-1, CR and PR at D-4 to D-6; Conf. Tr. at 123 (Comito). This larger crop corresponds to lower prices for domestic greenhouse tomatoes in 1999. Indeed, AUVs for field tomatoes follow the same pattern as AUVs for greenhouse tomatoes. Yearly AUVs for field tomatoes were 39 cents per pound, 28 cents per pound, and 35 cents per pound for the years 1998, 1999, and 2000, respectively. Table C-2, CR and PR at C-4. AUVs for domestic greenhouse tomatoes for the corresponding years were 83 cents per pound, 73 cents per pound, and 78 cents per pound. Table III-2, CR and PR at III-3.

[127] CR at VI-14 and PR at VI-4. See table VI-2, CR at VI-4 and PR at VI-3. (The increase in costs in the table is less than the one in the text due to rounding. The figure in the text of the staff report is based on figures that are not rounded.) In this investigation it is preferable to consider cost of goods sold together with selling, general, and administrative expenses. See CR at VI-12 to VI-13 and PR at VI-4.

D. Impact of the Subject Imports

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.[128] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[129] [130] [131]

Consistent with the rapid expansion in demand, domestic production of greenhouse tomatoes increased from 145.0 million pounds in 1998, to 172.6 million pounds in 1999, and to 183.5 million pounds in 2000.[132] Capacity, measured in acres under cover, increased from 382 to 448 and to 482 for the same years.[133] In pounds, capacity increased from 160.5 million in 1998, to 185.9 million in 1999, and further to 204.5 million in 2000.[134] Capacity utilization fluctuated in a narrow range, from 90.3 percent in 1998 to 92.8 percent in 1999, and to 89.7 percent in 2000.[135]

Similarly, U.S. shipments by domestic producers increased from 138.8 million pounds in 1998, to 163.1 million pounds in 1999, and to 179.1 million pounds in 2000.[136] Net sales increased at a slower rate, however, reflecting a decline in unit values. Net sales increased from $118 million in 1998, to $122 million in 1999, and to $141 million in 2000.[137] Unit values per pound fluctuated, falling from 83 cents per pound in 1998 to 73 cents per pound in 1999, before increasing to 78 cents per pound in 2000.[138]

---

[128] 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.").

[129] 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; Live Cattle from Canada and Mexico, Invs. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25 n.148.

[130] The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii) (V). In its notice of initiation, Commerce revised the calculations in the petition and estimated that dumping margins for imports of greenhouse tomatoes from Canada ranged from 0.00 to 126.73 percent. 66 Fed. Reg. 20630, 20633 (Apr. 24, 2001).

[131] Commissioner Bragg notes that she does not ordinarily consider the magnitude of dumping to be of particular significance in evaluating the effects of subject imports on the domestic products. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996); Anhydrous Sodium Sulfate from Canada, Inv. No. 731-TA-884 (Preliminary), USITC Pub. 3345 (Sept. 2000) at 11 n.63.

[132] Table III-2, CR and PR at III-3.

[133] Id.

[134] Id.

[135] Id.

[136] Id.

[137] Table VI-1, CR at VI-3, PR at VI-2.

[138] Table III-2, CR and PR at III-3.

The number of production and related workers increased from 1,608 in 1998, to 1,822 in 1999, and 1,945 in 2000.[139] Hours worked by and wages paid to production and related workers also increased over the period.[140]

Financial indicators, however, were flat or declining. The domestic industry generated operating income of 2.5 percent as a ratio to net sales in 1998, but experienced negative operating margins of 11.4 percent in 1999 and 7.8 percent in 2000.[141] The number of firms reporting operating losses increased from 3 out of 8 in 1998, to 6 out of 8 in 1999, and to *** out of 9 in 2000.[142] In addition, Colorado Greenhouse declared bankruptcy in 2000, and its assets were ultimately liquidated.[143] Suntastic reportedly declared bankruptcy in 2000, and is no longer in operation.[144] Ecoscience, the parent company of a third producer, Village Farms, declared bankruptcy in 2001.[145]

The domestic industry experienced higher costs in 2000 than in 1998 or 1999, which it was unable to offset by price increases, contributing to its losses in 2000. Although the domestic industry experienced various difficulties throughout the period,[146] the record indicates that lower prices adversely affected its financial performance. The domestic industry was profitable in 1998.[147] Although its per-unit costs were the same in 1999, lower prices caused the domestic industry to experience operating losses in 1999.[148] Although the domestic industry's costs increased in 2000, its operating losses were less severe that year, as a result of an increase in unit prices.[149] We intend to examine more closely the reasons for the industry's poor financial performance in any final phase of the investigation.

On balance, in light of significant and increasing volumes of subject greenhouse tomatoes from Canada that are highly substitutable with the domestic like product, the fact that subject imports undersold

---

[139] Id.

[140] Hours worked increased from 2,793 in 1998, to 3,253 in 1999, and to 3,476 in 2000. Wages paid increased from $18.7 million in 1998, to $22.2 million in 1999, to $28.5 million in 2000. Table III-2, CR and PR at III-3.

[141] Table VI-3, CR at VI-11, PR at VI-3.

[142] Table VI-1, CR at VI-3, PR at VI-2.

[143] CR and PR at VI-1.

[144] Id.

[145] Id.

[146] For example, several domestic producers experienced production difficulties throughout the period of investigation due to diseases that affected their tomato plants, damage from hail, and problems with labor and management. Conf. Tr. at 17-20, 51-53 (Fahrenbruch), 75-76 (Fahrenbruch and Bailey), 113-14 (John Cervini, General Manager, Lakeside Produce). Although production increased over the period, these difficulties prevented steeper volume increases, and resulted in higher per-pound costs than they would otherwise have experienced. One large producer also suffered from perceptions of poor quality after marketing under its name poorer quality tomatoes produced in Mexico, which adversely affected its sales. Conf. Tr. at 113 (Cervini). Respondents argued that the domestic industry experienced problems in part because many growers are located in the southern latitudes of the United States, where there was little experience with greenhouse tomato production. Conf. Tr. at 111-13. However, ***. Tables III-1 and VI-3, CR at III-2 and VI-11, PR at III-2 and VI-3.

[147] Table VI-3, CR at VI-11, PR at VI-3.

[148] Tables VI-2 and VI-3, CR at VI-4 and VI-11, PR at VI-3.

[149] Table VI-2 and VI-3, CR at VI-4 and VI-11, PR at VI-3.

the domestic like product in a majority of comparisons, and had significant price depressing and suppressing effects, and because of the domestic industry's poor financial condition, we determine, for purposes of this preliminary investigation, that subject imports are having a significant adverse impact on the domestic industry.

CONCLUSION

For the reasons stated above, we determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of greenhouse tomatoes from Canada that are allegedly sold in the United States at less than fair value.